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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92042082
Party	Plaintiff Four Seasons Dairy, Inc.
Correspondence Address	SAMUEL FRIEDMAN 225 BROADWAY, SUITE 1804 NEW YORK, NY 10007 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Samuel Friedman
Filer's e-mail	samfriedman@verizon.net
Signature	/Samuel Friedman/
Date	04/18/2008
Attachments	Motion to Extend Trial Dates (REDACTED).pdf (7 pages)(137091 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,479,287

Issued on August 21, 2001

FOUR SEASONS DAIRY, INC.,

Petitioner,

- against -

INTERNATIONAL GOLD STAR
TRADING CORP.,

Registrant

Cancellation No.: 92042082

Mark: BABUSHKA'S RECIPE

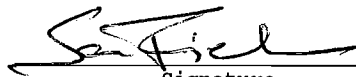
Reg. No. 2,479,287

Filed: December 7, 1999

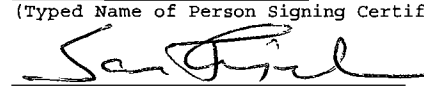
Issued: August 21, 2001

I hereby certify that this correspondence is being filed with the Trademark Trial and Appeal Board through use of the Electronic System for Trademark Trials and Appeals (ESTTA)

April 18, 2008
(Date of Electronic Filing)
Samuel Friedman
Name of Representative


Signature
April 18, 2008
Date of Signature

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on the date shown below:

Samuel Friedman
(Typed Name of Person Signing Certificate)

(Signature)

April 18, 2008
(Date)

**PETITIONER'S MOTION TO EXTEND TRIAL DATES AND RELATED SCHEDULES
PURSUANT TO FED. R. CIV. P. 6(b), TBMP § 509.01 and 37 CFR § 2.121**

Petitioner Four Seasons Dairy, Inc. respectfully requests that the Trademark Trial and Appeal Board extend by sixty (60) days, measured from the date of the Board's decision on this motion, the Petitioner's 30-day Testimony Period set forth in the Board's Scheduling Order.

Undersigned counsel for Petitioner respectfully alleges that the request to extend testimony periods is supported by good cause, as follows:

Petitioner has conducted seven testimonial depositions during its instant rescheduled testimony period which opened on or about March 30, 2008 and expires today, April 18, 2008. However, despite unrelenting efforts to conduct all depositions within the testimony

period, Petitioner was unable to conclude taking the testimony of all material and necessary witnesses.¹ One of Petitioner's nonparty witnesses, Natalie Walewitsch, had been noticed and scheduled for testimonial deposition the afternoon of April 16, 2008. However, due to a business emergency that arose on the morning of April 16, 2008, Ms. Walewitsch notified the undersigned that she would be unable to appear on that date and requested that the deposition be adjourned to a date in the coming weeks. Counsel for Petitioner was immediately notified by telephone. The parties proceeded with the deposition of Leon Sheikheit on April 16, 2008; and there was little, if any, inconvenience.

Of the witnesses whose testimony was taken, the testimony of one nonparty witness commenced but was unexpectedly and unforeseeably halted for reasons that are unclear. The identity and precise circumstances of this prematurely terminated deposition are set forth in the following paragraphs which are being filed under seal, due to the trade secret and commercially sensitive nature of the information and identification of the relevant persons and entities.

TRADE SECRET/COMMERCIALY SENSITIVE
REDACTED PURSUANT TO PROTECTIVE ORDER

[REDACTED]

¹ The following six depositions were completed: Alexander Bekker, Vice President of Petitioner on April 10, 2008, Oleg Kessler, President of Petitioner April 10, 2008, Leon Sheikheit, April 16, 2008, Arkadiy Golub, April 17, 2008, Sofya Sheyduasser April 17, 2008, Arie Zurinam April 18, 2008.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] with respect to quashing any subpoena that may issue to complete the deposition. Motion practice regarding the quashing of subpoenas is a matter over which the TTAB does not have jurisdiction. See TBMP §703.01(f)(2); In re Johnson & Johnson, 59 F.R.D.174, 178 USPQ 201, 201 (D. Del. 1973).

Additionally, a lingering issue may be the objection belatedly raised by counsel for Respondent at the very conclusion of the deposition of Arkadiy Golub, taken on April 17, 2008, that the testimony should be stricken because the witness should have testified with the aid of a translator. Counsel for Respondent is in error on this issue. While the native language of Mr. Golub is Russian, he has resided in the United States for at least 15 years and is conversant in English. Testimony given by Mr. Golub on direct examination was clear and straight forward. Cross examination by counsel for Respondent clearly exceeded the scope of the direct examination. Moreover, the cross examination was intended to elicit information that could have been obtained in discovery, as Mr. Golub's identity was revealed in Petitioner's Responses to Interrogatories served in 2004. Counsel for Respondent seeks to strike the testimony based upon unwarranted grounds. It is respectfully submitted that this issue cannot be resolved earlier than the return of the transcript of testimony from the court reporter; and its review by the witness and counsel and filing with the Board.

Similarly, the adjourned deposition of nonparty Natalie Walewitsch of Natar Foods is testimony of a nonparty who is voluntarily willing to testify. It was not necessary to secure a subpoena to compel attendance at deposition. Witnesses are sometimes unable to appear to give testimony on scheduled dates (even when under subpoena), due to events beyond their control. Accordingly, it respectfully requested that Petitioner's testimony period be extended for purposes including the taking of the deposition of Ms. Walewitsch.

Additional good cause exists for the instant request to extend trial dates due to an unanticipated and unforeseeable medical condition of the undersigned. On or about March 13, 2008, less than one week after the birth of my daughter on March 7, 2008, I was diagnosed with shingles, which is an acute viral infection similar to chicken pox, causing a rash of painful blisters, and general weakness and malaise. Shingles is an infectious disease that is easily spread to persons who have not had chicken pox or been vaccinated for chicken pox, such as newborn babies. Accordingly, my newborn daughter was at risk of contracting the disease; making it imperative that I recuperate as quickly as possible. My doctor prescribed the appropriate medication and instructed me to get as much bed rest as possible for a few weeks. I followed my doctor's instructions and now feel essentially recuperated. However, I would not have had the strength or stamina to conduct seven depositions at the onset of Petitioner's Reset Testimony Period. Similarly, I would not have had the strength, stamina or power of concentration during the weeks preceding the opening of Petitioner's testimony period to coordinate the scheduling of the depositions between the parties, witnesses and respective counsel. Moreover, prior to the onset of the illness I was devoting large amounts of time to pressing medical and family matters, namely my wife's pregnancy and the birth of our daughter on March 7, 2008.

For all of the foregoing reasons, Petitioner alleges that its instant motion to extend trial dates is supported by good cause. This request is not being made for purpose of delay and we therefore ask for favorable consideration.

Dated: April 18, 2008
New York, New York

Respectfully submitted,



Samuel Friedman
225 Broadway, Suite 1804
New York, New York 10007
Tel: (212) 267-2900
Attorney for Petitioner
FOUR SEASONS DAIRY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing PETITIONER'S MOTION TO EXTEND in Cancellation Proceeding No. 92042082 entitled Fours Seasons Dairy, Inc. v. International Gold Star Trading Corp., was served by First Class Mail, on counsel for Registrant, addressed as follows:

Roger S. Thompson
Cohen, Pontani, Lieberman & Pavane
551 Fifth Avenue
New York, New York 10176

with a courtesy copy by email to rthompson@cplplaw.com.

A handwritten signature in black ink, appearing to read 'S. Friedman', written over a horizontal line.

Samuel Friedman

April 18, 2008
Date